D.B. CIVIL SPECIAL APPEAL NO.93/2006

[National Insurance Company Ltd. **Vs**. Baij Nath & Ors.]

Date of judgment : 05th May, 2006

PRESENT

HON'BLE JUSTICE MR. RAJESH BALIA
HON'BLE JUSTICE MR. R.P. VYAS

Mr. Sanjeev Johari for the appellant.

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BY THE COURT : (PER HON'BLE R. BALIA, J.)

This appeal is directed against the judgment of learned Single Judge dated 22nd October, 2005 by which four appeals arising out of the same accident were decided by a common order. This appeal is against the judgment rendered in S.B. Civil Misc. Appeal No.129/2001 which was preferred by Baijnath, the owner of the vehicle involved in the accident. Said Baijnath, in appeal, has challenged the finding recorded against him that he was the owner of the vehicle. The appeal has been dismissed by learned Single Judge by holding that from the record, it is apparent that the vehicle was being plied for the use and benefit of Baijnath alone and applicant No.2, Dayanand Kaushik continued to be registered owner of the vehicle and both were held liable in respect of compensation as owner of the vehicle.

No appeal has been preferred by Baijnath against the order of learned Single Judge. This appeal by Insurance Company is only to the extent it claims that its liability under the policy was limited liability and is not coextensive with the liability of the owner. The contention raised by the appellant Insurance Company is outside the scope of appeal preferred by Baijnath and does not effect the merit of the decision rendered in Baijnath's appeal nor does it have any bearing on the question of law in this appeal about limited liability of insurer under the policy.

Consequently, the challenge to the appeal filed by Baijnath which has been dismissed by the learned Single Judge, no appeal is maintainable at the instance of Insurance Company.

Accordingly, this appeal fails and is hereby dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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